

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Case No. 1:15-cv-13367
)	
v.)	Judge Borroughs
)	
MONICA TOTH,)	
)	
Defendant.)	
)	

**PLAINTIFF UNITED STATES' MOTION FOR ORDER REQUIRING DEFENDANT TO
FILE ANSWER**

The United States moves for entry of an order requiring Ms. Toth to file an answer forthwith, by a date certain, and with no further extensions. By Memorandum and Order (ECF #59) dated May 2, 2017, the Court denied Ms. Toth's motion to dismiss. Therefore, under any interpretation of the federal rules, Ms. Toth was required to file an answer by mid-May. *See* Fed. R. Civ. P. 12(a)(4)(A). But she has not done so, and – based on the parties' correspondence – does not appear prepared to do so by any definite date.

The parties have conferred about Ms. Toth filing an answer, but to no avail.¹ By letter dated June 8, 2017, I wrote to Ms. Toth and explained that “[...] The time-period for you to file an answer to the United States' complaint has passed. If you do not have an answer filed and uploaded onto the docket before 4pm on June 15, 2017, I plan to move for the entry of your default.

¹ Undersigned counsel thus conferred with Ms. Toth in conformity with the local rules by letter dated June 8, 2017. Undersigned counsel certifies that the parties conferred by letter and have attempted in good faith to resolve or narrow the issue.

[...]." Exhibit 1 at 1. Ms. Toth then sent two emails, attached as Exhibits 2 and 3. Neither email provides a date by which she plans to file an answer.

The United States filed its complaint on September 17, 2015. Default was entered against Ms. Toth on February 9, 2016 (ECF #7). In response to Ms. Toth's request that the default be set aside and she be given an opportunity to hire an attorney, the Court vacated the default on August 17, 2016. (ECF #43.) Ms. Toth then took the time the Court provided and made the decision not to hire an attorney, although she did file a counterclaim, a 'motion for' declaratory judgment, and a motion to dismiss. Once her motion to dismiss was denied, however, she had an obligation to participate in the litigation by filing an answer. Her refusal to do so has left this case in limbo, as the discovery phase cannot meaningfully proceed until an answer is filed.

While the plaintiff cannot compel defendant to hire an attorney, neither can a pro se litigant flout the Court's rules by refusing to timely file an answer. For these reasons, the United States

requests that the Court order the defendant to file an answer by a date certain, forthwith, with no further extensions to be granted.

WHEREFORE, the United States requests entry of an order requiring defendant to file an answer forthwith, by a date certain, and with no further extensions.

Counsel for the Plaintiff United States of America,

DAVID HUBBERT
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U.S. Department of Justice, Tax Division

/s/Andrew A. De Mello
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Certificate of Service

I hereby certify that a true copy of the above document was served upon the following party by first-class mail on June 16, 2017:

Monica Toth
76 Hallet Hill Road
Weston, MA 02493

/s/Andrew A. De Mello

ANDREW A. DE MELLO
Trial Attorney, Tax Division
U.S. Department of Justice